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REMARKS

In the Examiner's Answer to Appellate Brief of April 15, 2005, while the Examiner did not specifically state so, the Examiner has, for the first time, withdrawn the rejection of claim 5 under 35 U.S.C. §102(b) as anticipated by Kossnar et al. and the rejection of claims 2 and 10-15 under 35 U.S.C. §103(a) as unpatentable over OMEGAMARKER® in view of Peterson. Appellant appreciates the Examiner's withdrawal of these rejections.

Appellant also appreciates the Examiner's remarks regarding an error to claim 11. Appellate has corrected claim 11 to comport with the previously entered amendment thereto. As corrected, claim 11 calls for a first housing element connected to a second housing element.

The Examiner has rearticulated each of the remaining rejections that were previously presented during examination of the above-captioned application. The Examiner maintains that claims 1, 6, 8, 16, and 18-20 are anticipated by OMEGAMARKER®. Appellant has fully addressed the patentability of these claims over OMEGAMARKER® at pages 4-8 of the Appeal Brief filed February 27, 2004 and pages 5-8 of the Supplemental Appeal Brief filed September 22, 2004. As Appellate stands by those arguments, there is no purpose in reiterating those arguments herein.

The Examiner has maintained the rejection of claims 1, 3, and 6 under 35 U.S.C. §102(b) as being anticipated by Kossnar et al. (USP 6,022,159) stating that "the term 'configured to' is not considered to be a positive structural limitation since it only requires the ability to so perform, i.e., the housings of Kossnar et al. are 'configured to' hold a compound that melts at a given temperature since such a compound can be held by the housings, if so desired." Examiner's Answer, pg. 5, note 2, last paragraph. Appellant respectfully disagrees.

"To anticipate a claim, the reference must teach every element of the claim." MPEP §2131. As such, to sustain the Examiner's rejection, each and every element of claims 1, 3, and 6 must be taught by the reference. Notwithstanding this well-established standard, the Examiner has relied on Kossnar et al. despite there being no disclosure in

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Kossnar et al. that the dual pen holder disclosed therein has a first housing configured to hold a first compound which melts at a first given temperature and a second housing configured to hold a second compound which melts at a second given temperature as called for in claim 1. That is, the Examiner has inferred teachings from the reference that the reference itself does not suggest. Specifically, the Examiner has concluded that the pen holder taught by Kossnar et al. is "configured" to hold two different compounds that melt at two different temperatures. The reference, however, makes no such teaching. Kossnar et al. discloses a pen holder that is configured to hold two pens. There is no teaching that the pens melt at two different temperatures or that the structures that hold the two pens are also configured to hold two different compounds that melt at two different temperatures. In short, the Examiner has read a limitation of claims 1, 3, 6 into the reference rather than providing any support in the reference that the reference teaches or otherwise discloses the limitations of claims 1, 3, and 6. Accordingly, that which is called for in claim 1, and those claims that depend therefrom, is not anticipated by Kossnar et al.

The Examiner also maintains the rejections under 35 U.S.C. §102(b) of claims 1, 3, 5, 6, 8, and 9 as anticipated by Kirk (USP 3,564,668) and claims 1, 3, 5, 6, and 8 as anticipated by Aronson (USP 4,244,660). Likewise, there is no disclosure that the holder for pencils to be clipped on book disclosed in Kirk or the container for marking instruments disclosed in Aronson include a first indicator stick housing configured to hold a first compound which melts at a first given temperature and a second indicator stick housing configured to hold a second compound which melts at a second given temperature as called for in claim 1. That is, as with Kossnar et al., the Examiner has read limitations of the claims into the references notwithstanding the references failure to teach or disclose such a limitation. In other words, the Examiner has concluded that the devices of Kirk and Aronson must be configured to hold two different compounds that melt at two different temperatures simply because both references teach devices that hold pencils or marking instruments. However, there is no teaching in the references to conclude the devices of the respective references are configured to hold anything other than that which the references expressly disclose. As such, the Examiner's conclusion

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ignores that to support a rejection under 35 U.S.C. §102, the references must teach each and every limitation called for in the claims. Accordingly, that which is called for in claim 1 is not shown or disclosed in Kirk or Aronson, respectively. Therefore, it is believed that claim 1, and those claims that depend therefrom, are not anticipated by these references.

Throughout the Examiner's Answer of April 15, 2005, the Examiner has repeatedly stated that "the manner in which an assembly is to be used is not a structural limitation" and that "Applicant's housings are 'configured to' hold a compound that does not melt at a given temperature, e.g., are configured to hold material that does not melt at a given temperature." Examiner's Answer, pg. 8, ¶1; pg. 9, ¶2; pg. 10, ¶1; pg. 11, ¶1; pg. 13, lns. 1-6; pg. 13, ¶2; and pg. 14, ¶2. The Examiner's statement disregards that which is expressly called for in the claims. Claim 1 calls for, in part, a first and a second indicator stick housing wherein each indicator stick housing is configured to hold a compound which melts at a given temperature, respectively. As previously presented in the Appeal Brief of February 27, 2004 and the Supplemental Appeal Brief of September 22, 2004, such indicator stick housings are not disclosed or suggested in Kossnar et al., Kirk, Aronson, or Peterson, individually or in any combination thereof.

Appellant does not disagree that OMEGAMARKER® discloses a plurality of individual temperature indicating sticks. Again, this is not what is called for in the claims. For example, claim 1 calls for a dual temperature indicator stick assembly having a one-piece connector physically connecting the first and the second indicator stick housings. The benefits of Appellant's invention over OMEGAMARKER® have been clearly addressed in the Background of the present Application. OMEGAMARKER® discloses a plurality of individual temperature indicating sticks that must be removed from the case. A person of ordinary skill in the art would readily appreciate that the individual indicators of OMEGAMARKER® must be removed from the case to indicate temperature and are not "connected" when removed therefrom. Accordingly, the collection of indicators and the case does not form a dual temperature indicator stick assembly as called for in claim 1. "The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach."

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MPEP § 2111, citing In re Cartright, 165 F3d 1353 (Fed. Cir. 1999). Accordingly, a person of ordinary skill in the art would not interpret the claimed one-piece connector physically connecting the first and second indicator sticks housings as equivalent to the self-contained case shown and described in the OMEGAMARKER® reference.

The Examiner further stated that "the Examiner's statements regarding the recitation of the phrase 'dual temperature indicator stick' in the preamble was used by the Examiner as an attempt to explain to the Applicant that he is not positively claiming sticks in the body of claim 1." Examiner's Answer, pg. 8, ¶2. The Examiner has disregarded that "[a] claim preamble must be read in the context of the entire claim" and "[a]ny terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation" as stated in MPEP § 2111.02. MPEP § 2111.02. Therefore, applying the principles of MPEP § 2111.02, the broadest reasonable interpretation of the claims, including the preamble where the preamble limits the structure of the claimed invention, must be consistent with the interpretation a person of ordinary skill in the art would acquire therefrom. Appellant believes that claim 1 is just such an example of where the preamble limits the structure of the claimed invention.

That is, the entirety of claim 1, which includes the preamble, defines a dual temperature indicator stick assembly having a first and a second indicator stick housing wherein the indicator stick housings are configured to hold a respective compound which melts at a given temperature. As previously presented, the art of record fails to teach or suggest such an assembly. As such, if the elements of the claim are read in context with the preamble, there is no doubt that the claim defines over the art of record. Appellant has fully addressed this issue with respect to each of the claims in the Appeal Brief of February 27, 2004 and the Supplemental Appeal Brief of September 22, 2004.

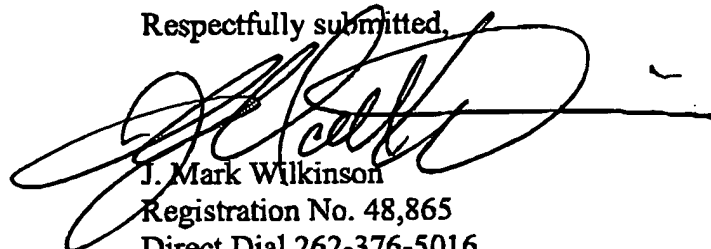
For all of the reasons stated above and as set forth in the Appeal Brief of February 27, 2004 and the Supplemental Appeal Brief of September 22, 2004, Appellant believes claims 1-20 patentably distinguish Applicant's invention over the art of record. Upon consideration of the remarks herein and the arguments presented in the Appeal Brief of February 27, 2004 and the Supplemental Appeal Brief of September 22, 2004, Appellant

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respectfully requests favorable action over the remaining rejections of the present claims and further requests that the above-captioned application pass to issuance.

Respectfully submitted,



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Dated: May 17, 2005
Attorney Docket No.: ITW7510.008

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APPENDIX OF CLAIMS ON APPEAL

1. (Previously Presented) A dual temperature indicator stick assembly comprising:

a first indicator stick housing positioned along a first axis and configured to hold a compound which melts at a first given temperature;

a second indicator stick housing positioned along a second axis and configured to hold a second compound which melts at a second given temperature; and

a one-piece connector physically connecting the first and second indicator stick housings along different axes.

2. (Original) The dual temperature indicator stick assembly of claim 1 further comprising:

a pair of resistance mechanisms attached to one of the first and second indicator stick housings to limit rotational movement of the first and second indicator sticks;

a pair of collets having threads, each collet rotatably coupled to one of the first and second housings; and

wherein each of the pair of collets is configured to engage separate indicator sticks upon rotation of a collet about one of the first and second axis.

3. (Previously Presented) The dual temperature indicator stick of claim 1 wherein the connector comprises a longitudinal member having curved ends, the curved ends configured to secure the first and second indicator stick housings to the connector.

4. (Original) The dual temperature indicator stick of claim 3 wherein the curved ends have hooks configured to engage the first and second indicator stick housings to prevent rotation of the first and second indicator stick housings.

5. (Original) The dual temperature indicator stick of claim 3 wherein each of the curved ends includes a pair of curved sections.

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6. (Original) The dual temperature indicator stick of claim 3 wherein the connector slidably secures the first and second indicator stick housings in a side-by-side relationship.

7. (Previously Presented) The dual temperature indicator stick of claim 4 wherein the first and second indicator stick housings have an exterior surface having a groove therein for engaging the hooks of the curved ends of the longitudinal member.

8. (Previously Presented) The dual temperature indicator stick of claim 1 wherein the connector is configured to snap fit the first and second indicator sticks to the connector.

9. (Original) The dual temperature indicator stick of claim 1 wherein the connector includes a clip member configured to permit attachment of the dual temperature indicator stick assembly to an object.

10. (Original) A dual temperature indicator stick holder comprising:
a connector assembly adapted to receive and position two temperature indicator sticks in a side-by-side relationship;
a pair of advancement mechanisms configured to extend the two temperature indicator sticks from the connector assembly; and
wherein each of the pair of advancement mechanisms engages a respective temperature indicator stick upon rotation of a respective advancement mechanism.

11. (Previously Presented) The dual temperature indicator stick holder of claim 10 wherein the connector assembly includes a first housing element connected to a second housing element, each of the first and second housing elements having a single advancement mechanism secured thereto and capable of holding a temperature indicator stick therein.

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12. (Original) The dual temperature indicator stick holder of claim 11 wherein the connector assembly further includes a pair of resistance mechanisms attached to one of the first and second housing elements to limit rotational movement of the two temperature indicator sticks.

13. (Previously Presented) The dual temperature indicator stick holder of claim 11 wherein the first and second housing elements each has a groove on an outer surface to engage an end of a clamp and prevent rotation of the first and second housing elements.

14. (Original) The dual temperature indicator stick holder of claim 10 wherein the connector assembly includes a clamp to align two temperature indicator stick housing elements along different axes.

15. (Original) The dual temperature indicator stick holder of claim 14 wherein the clamp has a longitudinal member having curved ends, the curved ends configured to slidably secure the two temperature indicator stick housing elements in a side-by-side relationship.

16. (Original) A dual temperature indicator stick apparatus comprising:
first means for indicating a first temperature;
second means for indicating a second temperature; and
means for retaining the first means to the second means in a side-by-side relationship to form an indicator stick assembly capable of indicating at least two temperatures.

17. (Original) The apparatus of claim 16 further comprising a means for controlling movement of the first and second means.

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18. (Original) The apparatus of claim 16 wherein the first and second means comprises a first temperature indicator stick and a second temperature indicator stick.

19. (Original) The apparatus of claim 16 wherein the means for retaining the first means to the second means comprises a pair of tubular members secured together by a connector.

20. (Original) The apparatus of claim 19 wherein the connector includes a longitudinal member having curved ends integrally molded to each of the tubular members.

Claims 21-24 (Canceled)